



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2016-0032

RIN 1625-AA11

Regulated Navigation Areas; Escorted Submarines Sector Jacksonville Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulated navigation areas (RNA) covering the St. Marys Entrance Channel, portions of the Cumberland Sound, and the Atlantic Ocean, that will be in effect whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard and operating within the jurisdictional waters of the Sector Jacksonville Captain of the Port Zone. These RNAs are necessary to help ensure the safety and security of submarines, their Coast Guard escorts, and the public. The RNAs will do so by requiring all persons and vessels located within a RNA to follow orders and/or directions given to them by Coast Guard escort personnel. Additionally, these proposed RNAs will supersede the current temporary safety/security zone for Cumberland Sound, Georgia and St. Mary's River Entrance Channel. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0032

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Coast Guard Sector Jacksonville, Chief of Waterways Management, telephone (904) 564-7563, e-mail Allan.H.Storm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Navy submarines frequently operate within the Cumberland Sound and the St. Marys Entrance Channel. When transiting these areas, the submarines and the vessels towing them are restricted in ability to maneuver and are unable to keep out of the way of other vessels. Due to the safety concern of the submarines being severely restricted in their ability to deviate from course and other various security concerns involved with submarine operations near shore in restricted waters, the Coast Guard provides submarine escorts when they are operating in those areas and offshore in the Atlantic Ocean.

Currently, there are two regulatory options the Coast Guard uses to safeguard the movement of submarines, their Coast Guard escorts, and the public in and around the Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean. The

primary, and most often used, option comes from the authorities contained in the Naval Vessel Protection Zone (NVPZ) regulations found in 33 CFR 165.2025. The NVPZ provides a 500-yard regulated area of water surrounding large U.S. naval vessels. However, this 500-yard regulated area can be insufficient at times due to the narrow confines of the Cumberland Sound and the St. Marys Entrance Channel, because it forces the submarines and their Coast Guard escorts to come into close quarters contact with other vessels. The Captain of the Port (COTP) Jacksonville, Florida can also activate the safety/security zone, published in 33 CFR 165.731, to protect the safety and security of naval assets and the public; however this regulation may provide greater restrictions on vessel traffic than would be necessary through these proposed RNAs. Additionally, the method of activating the safety/security zone is generally a broadcast notice to mariners, which alerts the public to the location of submarines and exposes the submarines to potential threats. Under these proposed RNAs, military vessel locations and movements would not be broadcast, therefore mitigating threats to the safety and security of the naval vessels and their Coast Guard escort assets. These RNAs supersede the temporary safety/security zone mentioned above.

The RNAs established by this rule will allow Coast Guard escort personnel adequate time to effectively order and/or direct persons and vessels operating within a RNA to stop, move, change orientation, *etc.*, as needed to ensure safety and/or security. The ability to order and/or direct persons and vessels will help avoid unnecessary and potentially dangerous close quarters contact between Coast Guard escorts and the maritime public within Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean. In addition, it will give Coast Guard escorts an additional tool for determining the intention of vessels that are operating in close vicinity to an escorted submarine. The RNAs will mitigate the risks associated with these

issues, and ensure the safety and security of the submarines, their Coast Guard escorts, and the maritime public.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

As stated in Section II above, submarines that transit within the Cumberland Sound and the St. Marys Entrance Channel are severely restricted in their ability to deviate from their course and encounter a variety of security concerns involved with submarine operations near shore in very restricted waters. To better protect the movement of submarines, Coast Guard escorts and the public in and around the Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean, the Coast Guard proposes to establish RNAs when Navy submarines (foreign or domestic) are escorted by Coast Guard vessels within the Sector Jacksonville Captain of the Port Zone territorial seas. The proposed regulation applies in two locations.

One area would encompass all waters within one (1) nautical mile of the charted center of the navigation channel from Crab Island in the Cumberland Sound, Georgia, to the St. Marys Entrance Channel and its approach extending eastward to lighted buoy “STM”. This portion of the proposed regulation would allow Coast Guard vessels to direct waterway traffic in any portion of this confined channel when a submarine is being escorted.

Additionally, a regulated area will encompass waters within one (1) nautical mile of any Navy submarine while it is transiting territorial seas within the Sector Jacksonville Captain of the Port Zone. All persons and vessels located within the RNA are required to follow orders and/or directions given to them by Coast Guard escort personnel.

Lastly, these proposed RNAs supersede the temporary safety/security zone found in 33 CFR 165.731(b); thus requiring revision to 33 CFR 165.731. These amendments include a title

change to the regulation, the removal of the temporary safety/security zone, and the addition of the term “designated representatives” for enforcement authorities.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard made this determination based on the fact that (1) the RNAs are only enforced for the short periods of time when submarines are operating in the St. Marys Entrance Channel, portions of the Cumberland Sound, and Atlantic Ocean and escorted by the Coast Guard or anytime a submarine is operating and escorted by the Coast Guard within the Sector Jacksonville Captain of the Port Zone territorial seas and (2) vessels may freely operate within the RNAs to the extent permitted by other law or regulation unless given an order and/or direction by Coast Guard escort personnel.

The Coast Guard has determined that this proposal, superseding the temporary safety/security zone implemented under 33 C.F.R §165.731(b), does not constitute a “significant

regulatory action” under E.O. 12866 based on the size and location of the security zone. The permanent security zone currently implemented under 33 C.F.R. § 165.731(a) remains in effect and covers approximately 5 square nautical miles of a sparsely populated section of Cumberland Sound and tributaries where few recreational or commercial vessels transit. Vessels transiting this area of Cumberland Sound can transit around the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you

have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of RNAs, thereby removing the temporary safety/security zone covering the St. Marys Entrance Channel, portions of the Cumberland Sound, and Atlantic Ocean, that will be enforced whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard and operating within the jurisdictional waters of the Sector Jacksonville Captain of the Port Zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.731 to read as follows:

§ 165.731 -- Security Zone: Cumberland Sound, Georgia.

(a) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville, Florida in the enforcement of the regulated areas.

(b) *Location.* A permanent security zone is established within the following coordinates, the area enclosed by a line starting at 30°44'55" N, 081°29'39" W; thence to 30°44'55" N, 081°29'18" W; thence to 30°46'35" N, 081°29'18" W; thence to 30°47'02" N, 081°29'34" W; thence to 30°47'21" N, 081°29'39" W; thence to 30°48'00" N, 081°29'42" W; thence to 30°49'07" N, 081°29'56" W; thence to 30°49'55" N, 081°30'35" W; thence to 30°50'15" N, 081°31'08" W; thence to 30°50'14" N, 081°31'30" W; thence to 30°49'58" N, 081°31'45" W;

thence to 30°49'58" N, 081°32'03" W; thence to 30°50'12" N, 081°32'17" W; thence following the land based perimeter boundary to the point of origin.

(c) *Regulations.* (1) No person or vessel may enter or remain within the security zone without the permission of the COTP Jacksonville or designated representative.

(2) All persons and vessels in authorized permission to enter the security zone shall immediately obey any direction or order of the COTP Jacksonville or designated representative.

(3) This regulation does not apply to persons or vessels operating under the authority of the United States Navy or to authorized law enforcement agencies.

3. Add § 165.732 to read as follows:

§ 165.732 -- Escorted Submarines Sector Jacksonville Captain of the Port Zone

(a) *Location.* The following areas are regulated navigation areas (RNA) whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard within the Sector Jacksonville Captain of the Port Zone territorial seas:

(1) All waters within 1 nautical mile of any Navy submarine operating within the Sector Jacksonville Captain of the Port Zone territorial seas; and

(2) All waters within 1 nautical mile of the charted center of the navigation channel from Crab Island in the Cumberland Sound, Georgia to the St. Marys Entrance Channel and its approach extending eastward to lighted buoy "STM".

(b) *Regulations.* All persons and vessels located within a RNA created by paragraph (a) shall follow all orders and/or directions given to them by Coast Guard escort personnel. 33 CFR Section 165, Subpart B, contains additional provisions applicable to the RNA created in paragraph (a).

(c) *Notification.* The Coast Guard escort will attempt, when necessary and practicable, to notify any persons or vessels inside or approaching the vicinity of a RNA created in paragraph (a) of this section of its existence via VHF Channel 16 and/or any other means reasonably available.

Dated: June 2, 2016

S. A. Buschman,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District.

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